

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS  
CENTRAL SECTION

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U.S. DISTRICT COURT  
DISTRICT OF MASS.

CIVIL ACTION NO. 04-40027-NMG

DAVINCI BIOMEDICAL RESEARCH  
PRODUCTS, INC.

Plaintiff,

vs.

TOSHIBA AMERICA MEDICAL  
SYSTEMS, INC.

Defendant,

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**REPLY OF DAVINCI BIOMEDICAL RESEARCH PRODUCTS, INC.  
TO TOSHIBA AMERICA MEDICAL SYSTEMS, INC.'S COUNTERCLAIM**

Plaintiff/Defendant-in-Counterclaim Davinci Biomedical Research Products, Inc.

("Davinci") replies to the Toshiba America Medical Systems, Inc.'s Counterclaim and says:

1. Davinci admits that it agreed to purchase an OPART unit from Toshiba, upon Toshiba's misrepresentations concerning both the condition and capabilities of the unit, and admits that the purchase price was \$500,000 but denies the remaining allegations contained in this Paragraph.
2. Davinci admits the allegations contained in this Paragraph.
3. Davinci admits that it is still in possession of the Opart unit since Toshiba has refused to

accept its return.

4. Davinci admits that it has not paid the balance of the purchase price due to the defective condition and misrepresented capabilities of the unit.

### **AFFIRMATIVE DEFENSES**

#### **First Affirmative Defense:**

Toshiba's Counterclaim fails to state a claim for which relief may be granted.

#### **Second Affirmative Defense:**

Toshiba may not recover by virtue of a prior breach of contract.

#### **Third Affirmative Defense:**

Toshiba's Counterclaims are barred by the doctrine of unclean hands.

#### **Fourth Affirmative Defense:**

Toshiba's damages are the result of its own acts or omissions.

#### **Fifth Affirmative Defense:**

Toshiba's damages are the result of acts or omissions of a third party over whom DaVINCI has no control or authority.

#### **Sixth Affirmative Defense:**

Toshiba is barred from recovery under the doctrine of estoppel.

#### **Seventh Affirmative Defense:**

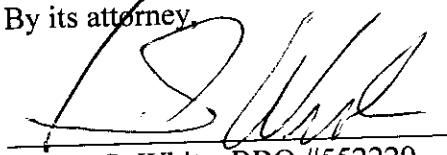
Toshiba's recovery is barred by its breach of express and implied warranties with respect to the OPART unit.

**WHEREFORE**, DaVINCI Biomedical Research Products, Inc. respectfully requests that this Honorable Court dismiss Plaintiff-in-Counterclaim Toshiba America Medical Systems Inc.'s Counterclaim, or, in the alternative, enter judgment in favor DaVINCI on the Counterclaim; award DaVINCI its attorney's fees and costs; and award DaVINCI such other and further relief as this Court deems just.

**DEFENDANT DAVINCI BIOMEDICAL RESEARCH PRODUCTS, INC.  
CLAIMS A JURY TRIAL ON ALL COUNTERCLAIMS**

Respectfully submitted,

DaVINCI Biomedical Research Products, Inc.  
By its attorney.

A handwritten signature in black ink, appearing to read 'R. S. White', is written over a horizontal line.

Robert S. White, BBO #552229  
BOURGEOIS, DRESSER, WHITE & BEARD  
4 Dix Street  
Worcester, MA 01609  
(508) 798-8801

Dated: May 7, 2004

CERTIFICATE OF SERVICE

I, Robert S. White, Attorney for DaVINCI Biomedical Research Products, Inc., hereby certify that I have this day served a copy of the foregoing document on all parties herein by causing a copy of the same to be sent via First Class Mail, Postage Prepaid.

A handwritten signature in black ink, appearing to read 'R. S. White', is written over a horizontal line.

Robert S. White

Dated: May 7, 2004